

### **REMARKS/ARGUMENTS**

Claims 1, 12, 13, 20-47 and 73-87 are pending in the application.

#### **Elections/Restrictions**

Claims 80-87 have now been indicated as being withdrawn. With regard to the Examiner's statement that election was made without traverse in applicants' reply filed on 01/21/2008, applicants would like to point out that in that reply applicants elected the invention of group I, namely claims 1, 12, 13, 20-29 and 31-63, and that the species identified as "withdrawn" in the May 12, 2008 amendment were identified as such only to correspond to the Examiner's listing, although such claims were not identified as "withdrawn" in the January 21, 2008 amendment, and reintroduction of these claims was requested in the paragraph bridging pages 14 and 15 of the May 12, 2008 amendment.

#### **Claim Rejections – 35 USC § 103**

The Examiner has rejected claims 32-37, 41-43, 46, 47 and 73-79 over Hochman in view of Guice. Applicants respectfully disagree.

1) With regard to claim 32, the Examiner has indicated on page 4 of the Office Action that, among other features, the probe unit of Hochman provides a two-way communication means that is capable of communication in real time. However, applicants respectfully disagree. Two-way, real time communication

capability means communicating by both sending and receiving signals simultaneously in both directions, as is possible with a cell phone. This is what applicants' claims require. In contrast, Hochman operates like a CB device, i.e. can communicate only in one direction or one-way at a time. In particular, with all of the Hochman embodiments, the device 10 must first be turned on, by the push button switch 15 located on its exterior surface, before it is ready to be inserted, and once inserted, no changes or alterations to operations of the probe can be made from an external source. Information from the probe device 10, whether from the muscle function pressure sensor 17 of the embodiment of Figs. 4, or from the CSV and temperature transducers 18 and 19 of the embodiment of Fig. 6, is generated (frequency modulated rf oscillator 29 or 21), in a one-way direction, to an external receiver. The embodiment of Fig. 5 does not even have a means to generate an rf carrier signal of its own (see column 9, lines 1 to 5). Rather, the source interrogator apparatus 33 generates the rf carrier signal which probe 10's backscatter modulator circuit 32 modifies to convey muscle function information by varying the amplitude of the interrogator's rf carrier and then reflects or scatters the modified rf carrier back to its source interrogator apparatus. Thus, Hochman's probe device 10 does not internally integrate or have a receiver or transceiver to receive signals from a (non-existent) controller unit wirelessly and in real time as specifically required by applicants' claim 32. Consequently, applicants respectfully submit that the rejection of claim 32 under 35 USC 103(a) over Hochman in view of Guice cannot stand.

2) As indicated above, the Examiner has recognized, at the bottom of page 6 of the Office Action, that Hochman does not disclose a controller unit comprising two-way communication means adapted to both receive signals from said probe unit and transmit signals to said probe unit wirelessly and in real time, wherein said signals to said probe unit comprise control and programming signals to start, stop, and/or alter the activity of the annular means of the probe unit, again as required by applicants' claim 32. However, on page 8 of the Office Action, the Examiner has stated that Guice teaches these missing features. Again, applicants respectfully disagree.

With regard to the two-way, real time (i.e. simultaneous) ability to both receive and transmit signals to the probe unit, it is respectfully submitted that paragraph [0209] of Guice makes it clear that the "central processing and control unit" can either only transmit signals or receive signals at any particular point in time, as with "pagers or other personnel alerting devices, personal digital assistants (PDAs),..." or "voice walkie-talkies and other personal radio devices". This is in response to information collected from the animal being monitored. Thus, the control unit of Guice cannot both transmit and receive signals at the same time, as a result of which Guice does not teach or suggest applicants' real time two-way communication.

3) The lack of any real time capability on the part of the Guice system is further supported by the operation as shown and described in conjunction with Figure 8. Because of the need to have its system operable over an extended

period of time (namely 90 days up to one year, as described in paragraph [0010]), it is necessary for the Guice system to conserve battery power (see for example paragraphs [0086], [0101], [0104], [0120], [0128] and [0172]). Therefore, the Guice system is powered down when not in use (see reference numeral 176 in Fig. 8). The basic operation of the Guice system in conjunction with Fig. 8, 9 and 10 is described in paragraph [0101]. In particular, when monitoring is desired, the sensor, processor, and memory circuits are powered up, as indicated at reference numeral 168. If an alert or data is to be transmitted, it is also necessary to then serially power up additional circuits, as indicated at the reference numeral 180, and then to again "Power Down Transmitter" (see reference numeral 184) and "Power Down Circuits" (see reference numeral 176). Thus, there is a real time delay due to the requirement to first power up multiple circuits serially, and it is respectfully submitted that the Guice system can in no way teach or suggest wireless real time two-way communication between a controller and a probe, and especially not such that a wireless signal feedback loop is provided in real time during operation of the system, as additionally required by applicants' claim 77.

4) Further support for the lack of simultaneous or two-way, real time communication on the part of Guice can be seen in Guice's numerous references to a separate transmitter or transmission on the one hand, and a separate receiver or reception on the other hand, for example in paragraphs [0042], [0085]

"transmitted to one or more receivers 62, 64...", [0086], [0087] [0101], [0104], [0108], [0112] – [0116], [0118], [0120], [0122], [0124], [0143], [0151] "telesensor implants which simply power-up sensor circuits at preprogrammed intervals, make a measurement, then power-up transmitter electronics and transmit the results of the measurements to a receiver...", and [0152]. The significance of the foregoing will become even more clear from the subsequent discussion regarding Guice's provision of separate transmitters and receivers, in contrast to applicants' provision of transceivers (as in claims 74 and 79), which make possible applicants' two-way, real time communication as required by all of its claims, and which is not taught nor suggested by the cited references.

5) Applicants' claim 73 further requires that the two-way communication means of the controller unit for transmitting signals to the probe unit to alter the activity of its annular means includes means for wirelessly altering operation settings of said probe, in real time. Applicants respectfully submit that in Guice it is primarily the telesensor itself that alters operation settings, and in particular based on its pre-programming. For example, in paragraph [0152] it is indicated that smart telesensors can also alter their measurement intervals and transmissions based upon results of measurements. In paragraph [0104] it is indicated that the telesensor increments the time for the next measurement. This paragraph also states that where an additional data readout is requested, the telesensor simply powers up and then (the telesensor) adjusts the time for the next measurement. Any changes effected by an external device of Guice first of

all are not effected in real time, as discussed in detail above, and furthermore concerns only measurement parameters, such as time intervals and thresholds, and has nothing to do with altering operation settings of non-existent stimulation means, namely a substantially flush annular means "adapted to deliver electrical pulses", in contradistinction to the requirements of applicants' claims 32 plus 73.

6) Applicants' claim 74 further limits claim 73 by defining that the means of the controller unit for wirelessly altering integrates a battery, transceiver, antenna, memory and a microprocessor. Such lack by Guice of an integration of the specifically listed components within a controller unit will be discussed in greater detail below.

7) Applicants' Claim 32 requires that both the probe unit (which is to be contained entirely within the mammals' vagina) and the external controller unit comprise two-way communication means. Applicants' claim 79 further defines that the two-way communication means of the probe unit and of the controller unit are in the form of transceivers. Claim 74 also defines that the two-way communication means of the controller unit contains a transceiver.

As discussed above, the systems of Guice must conserve battery life in order to be able to operate over their anticipated life cycles. In paragraph [0128], Guice teaches that "[g]enerally, transmissions via RF or IR of data or warning alerts are among the most energy consuming functions of the telesensors as described herein". Thus, one of skill in the art would know that only a separate transmitter on the one hand, and a separate receiver on the other hand, which

can separately be powered up and down as needed should be utilized by such systems to conserve battery life. This is also recognized by Hochman (see column 3, lines 31-34), which nonetheless still calls for use only of frequency modulated rf oscillating transmitters 29 and 21. The Examiner's attention is also directed to the Abstract and paragraphs [0087] and [0196] of Guice for the teaching of providing boost and relay capability at a second location on an animal, i.e. external to the telesensor implant itself.

The Examiner states on pages 8 and 9 of the Office Action that the controller unit and the probe unit of Guice comprise two-way communication means in the form of transceivers, as required by applicants' claim 79 (and also claim 74 for just the controller unit). Applicants respectfully disagree.

In all applications where the Guice telesensors are to be used (actually implanted) in a cavity such as a cow's vagina, the Guice systems utilize separate transmitters and receivers to preserve battery life. For example, in paragraphs [0128], [0151] and [0152], both the dumb and smart wireless telesensor implants utilize transmitter elements, which, it should also be noted, after the telesensors themselves are first powered-up or woken up, have to be powered-up before they can even transmit, as taught in paragraph [0101] and Figures 8, 9 and 10. Similarly, paragraph [0122] refers to embodiments that employ telesensor implant units designed to be installed in a cavity, such as a vagina, as employing transmitters.

Where the Guice systems suggest the use of transceivers, it is respectfully submitted that these transceivers are either entirely external to the animal itself, or at least remote to the telesensor. For example, in paragraph [0086] and Figure 3, it is indicated that the receivers, transceivers, transponders or other RF signal relay devices 58 are mounted on or attached to the animal, directly or indirectly, by various devices such as an ear tag or collar. Alternatively, the receivers, transceivers, transponders or RF signal devices can be provided in the vicinity of the pens, etc. in which the animals are maintained, referring to the devices 62 in Fig. 3. Paragraph [0204] also refers to the transceiver 62, and states further that it may be contained in an enclosure suitable for outdoor mounting, especially on poles or other elevated structures as illustrated in Fig. 1. Thus, applicants respectfully submit that Guice teaches away from applicants' claims 79 and 74 that provide for the two-way communication means being in the form of transceivers. In this regard, the Examiner's attention is respectfully directed to MPEP 2141.02I, which states that in determining the differences between the prior art and the claims, the question is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious; subsection VI furthermore indicates that the prior art must be considered in its entirety, including portions that would lead away from the claimed invention.

8) Further with regard to claim 74, not only is any transceiver (such as the device 62 discussed above) not even directly part of the controller unit, it



certainly cannot be considered to be integrated in the two-way communication means of the controller unit, in contradistinction to the requirements of applicants' claim 74.

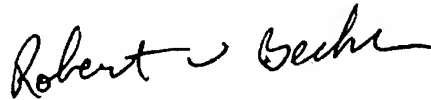
9) Applicants' claim 76 requires integration of various components within the probe unit, including in particular the two-way communication means with antenna. Applicants respectfully disagree with the Examiner's assessment that Guice teaches such integration. Guice makes the distinction, numerous times, between versions of its systems that are to be used in such cavities as ear canals, and versions that are to be used in such cavities as a vagina or rectum. In the internal cavity versions, such as for the vagina, the antenna is in fact not integrated in the probe. For example, in the embodiment described in paragraph [0132], a portion of the implant (normally only the antenna) is described as penetrating the skin or hide of the animal. Paragraph [0155] also describes the percutaneous implantation of the antenna. Not only do such separated embodiments of the antenna not teach or suggest applicants' integrated antenna as defined in claim 76, with such a teaching the probe or telesensor also would not fulfill the basic requirements of applicants' claim 32, namely that the probe unit have a substantially smooth and substantially sealed outer surface, and that it be dimensioned to permit comfortable and repeated insertion into, removal from, and containment entirely within a mammal's vagina; since applicants' two-way communication means with antenna is also part of the probe unit of claim 32, the various antenna embodiments described by Guice teach away from

applicants' design. As a matter of fact, this requirement of applicants' claim 32 that the portable probe unit be dimensioned to permit "comfortable and repeated insertion into, removal from, and containment entirely within a mammal's vagina" cannot be met by any of Guice's embodiments, as clearly set forth in paragraphs [0129] – [0132], wherein paragraph [0129] indicates that the following paragraphs cover all of Guice's telesensor elements. And since these embodiments are all defined as being "implants", it is respectfully submitted that they certainly fail to meet this requirement of applicants' claim 32.

MPEP Section 2141 III requires that the Examiner "must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art. The "mere existence of differences between the prior art and an invention does not establish the invention's non-obviousness"". This section of the MPEP also requires a "clear articulation of the reason(s) why the claimed invention would have been obvious", going on to state that "rejections on obviousness cannot be sustained by mere conclusory statements". MPEP Section 2143.01 IV also emphasizes that a "mere statement that the claimed invention is within the capabilities of one of ordinary skill in the art is not sufficient by itself to establish prima facie obviousness...without some objective reason to combine the teachings of the references". Therefore, in view of the foregoing discussion, and the failure of the prior to teach or suggest applicants' system for stimulating pelvic muscles and/or nerves to one of ordinary skill in the art, applicants respectfully request reconsideration of all of the pending

claims. In addition, in order to resolve any outstanding issues and to facilitate placement of the application into condition for allowance, the undersigned hereby respectfully requests a telephone interview with the Examiner.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert W. Becker". The signature is fluid and cursive, with a long horizontal stroke at the end.

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